

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP
2 Alex Spiro (*appearing pro hac vice*)
3 alexspiro@quinnemanuel.com
4 Kyle Batter (Bar No. 301803)
5 kylebatter@quinnemanuel.com
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, California 94065
5 Telephone: (650) 801-5000

6 Michael T. Lifrak (Bar No. 210846)
7 michaellifrak@quinnemanuel.com
8 Jeanine Zalduendo (Bar No. 243374)
9 jeaninezalduendo@quinnemanuel.com
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017-2543
10 Telephone: (213) 443-3000

11 *Attorneys for Defendants Tesla, Inc., Elon Musk,
Brad W. Buss, Robyn Denholm, Ira Ehrenpreis,
Antonio J. Gracias, James Murdoch, Kimbal Musk,
And Linda Johnson Rice*

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16

17 IN RE TESLA, INC. SECURITIES
18 LITIGATION

Case No. 3:18-cv-04865-EMC

19
20
21
22
**DECLARATION OF KYLE BATTER IN
SUPPORT OF DEFENDANTS' MOTION
PURSUANT TO LOCAL RULE 7-3(d)
FOR PERMISSION TO SUPPLEMENT
THE RECORD ON PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

23
24
25
26
27
28

DECLARATION OF KYLE BATTER

I, KYLE BATTER, declare as follows:

3 1. I am an attorney at the law firm Quinn Emanuel Urquhart & Sullivan, LLP, counsel for
4 Defendants Tesla, Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J.
5 Gracias, James Murdoch, Kimbal Musk, and Linda Johnson Rice in this action. I make this
6 declaration in support of Defendants' Motion Pursuant to Local Rule 7-3(d) For Permission to
7 Supplement the Record on Plaintiff's Motion for Partial Summary Judgment. I know the facts stated
8 herein of my own personal knowledge and, if called as a witness, I could and would testify
9 competently thereto.

10 2. Attached hereto as **Exhibit A** is a true and correct copy of excerpts from the rough
11 transcript of the March 31, 2022 deposition of Plaintiff Glen Littleton.

12 3. Attached hereto as **Exhibit B** is a true and correct copy of an August 13, 2018 blog
13 post by Elon Musk, which has been marked as deposition Exhibit 53 in this case and is already a part
14 of the summary judgment record.

15 I declare under penalty of perjury of the laws of the State of California that the foregoing is
16 true and correct. Executed this 1st day of April 2022.

Kyle Batts

Kyle Batter

EXHIBIT A

CONFIDENTIAL

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Case No. 18-cv-04856-EMC

IN RE: TESLA, INC., SECURITIES
LITIGATION

DEPOSITION UNDER ORAL EXAMINATION OF:
GLEN LITTLETON
March 31, 2022

REPORTED BY: JENNIFER L. WIELAGE, CCR, RPR, CRR

JOB # 12108

1 GLEN LITTLETON,

2 12115 Southeast West Road, Edgerton, Missouri, having
3 been first duly sworn, according to law, testifies as
4 follows:

5 EXAMINATION BY MR. PRICE:

6

7 THE VIDEOGRAPHER: We are now on the
8 record. Today's date is March 31, 2022 and the time
9 is 10:40 a.m. central time zone. This is the
10 recorded video deposition of Glen Littleton in the
11 matter of In Re: Tesla, Inc. Securities Litigation
12 in the United States District Court, Northern
13 District of California, Case No. 18-CV-04865-EMC. My
14 name is David Amrhein from Everest Court Reporting
15 and I am the video specialist. The court reporter
16 today is Jennifer Wielage, also from Everest Court
17 Reporting. All counsel appearing today will be noted
18 on the stenographic record. Will the court reporter
19 please swear in the witness.

20 BY MR. PRICE:

21 Q. Thank you, good morning,
22 Mr. Littleton. Can you hear me?

23 A. Yes, I can.

24 Q. Oh, great. I represent defendants
25 and so we're taking your deposition today. Have you

1 looked at the Tweet which conveyed to you that, in
2 your words, Elon Musk was committed to taking Tesla
3 private, did you need to consult -- I guess as you
4 called it the Greeks, what was going on, before
5 reaching the conclusion: Wait a minute. This is
6 going to have an effect on my portfolio?

7 A. You know, I'm sorry. Would you
8 rephrase the -- repeat the question? I'm not sure
9 what you're asking.

10 Q. Sure. When you looked at the
11 Tweet --

12 A. When I looked at the Tweet?

13 Q. Yeah. When you looked at the Tweet
14 which conveyed to you that, using your words, Elon
15 Musk was committed to taking Tesla private, you know,
16 did you need to consult other data such as what
17 you've described as the Greeks or something else
18 before you came to the realization that that Tweet is
19 going to have a detrimental effect on my portfolio?

20 A. I knew it because I had 50, 40 years
21 of experience in markets. I knew that funding
22 secured at 420 would eliminate any value from the
23 options that I was using as portfolio hedging. So I
24 knew that as fact.

25 Q. And your -- you believe that your 50

1 contingent upon money being available. If there's
2 money available and Elon wants to take it private, it
3 was going to happen. Funding secured was so key, so
4 fundamental because everything else can be worked
5 around, could be changed, could be adapted but if
6 there's money and Elon wants to go private, it will
7 happen. So that was so fundamental to me.

8 Q. Did you read this Tweet to mean that
9 shareholder support was confirmed?

10 MR. PORRITT: Object to form.

11 A. No. I just -- to me, it was another
12 affirmation that funding was secured. "Investors
13 support is confirmed" that's -- to me, it's very
14 similar to, if not synonymous with, funding secured.
15 It's another way of saying it.

16 Q. You're reading investors there
17 meaning whoever is financing the go-to private
18 transaction?

19 A. Yeah, the investors, yes.

20 Q. Now, when you read that "only reason
21 why this is not certain is that it's contingent on a
22 shareholder vote", did you read that to mean that
23 there had already been a detailed proposal to the
24 board of directors, created a special committee and
25 approved it and all of that?

1 MR. PORRITT: Object to form.

2 MR. PRICE: I'm going to have to
3 change my question if you object to form on this one.

4 BY MR. PRICE:

5 Q. So when you read -- read this, only
6 reason why this is not certain is that it's
7 contingent on a shareholder vote, did you read that
8 to mean that all the steps that would be necessary
9 within the company, you know, to approve a go-to
10 private transaction had already taken place?

11 A. I -- I didn't think about that. What
12 I thought about was that Elon's a convincing guy,
13 he's in charge of the company and funding is secured
14 and it was going to happen.

15 Q. Did you know -- strike that.

16 Other than -- let me ask you: So
17 what was your understanding of "funding secured"?

18 What did that mean to you?

19 A. That somebody was willing to write a
20 check, the Saudis, the -- Elon through banks. I
21 thought that he would probably arrange for funding
22 from banks to make up for whatever was shortfall.
23 Money was there, funding was certain.

24 Q. So you read that to mean that someone
25 had committed, basically, cash, write a check for --

1 A. Yeah.

2 Q. -- for a go-to private transaction
3 420 per share?

4 A. One -- a group of people; cumulative
5 nature.

6 Q. That's fair enough. So let me change
7 a question so we have a question and answer on the
8 same page.

9 So you read funding secured to mean
10 that someone or a group of someones had committed,
11 basically, cash, write a check, for a go-to private
12 transaction at \$420 per share?

13 A. Well, the nature of the funding
14 was -- it would be Connecticut juncture. I just knew
15 that he said there was funding certain. There was a
16 group/individual, somehow, bank lending, that he
17 would arrange to make it happen.

18 Q. And to make it happen, you know,
19 could mean actually paying \$420 to every shareholder
20 who wanted to be bought out, correct?

21 A. I'm sorry, what are you asking me?

22 Q. You said that he had funding that was
23 certain that would be arranged to make it happen.
24 And I was just trying to define "it happen". It
25 happening would be, you know, paying \$420 per share

1 to any shareholder who did not want to be part of
2 going private?

3 A. That was the implication, yes.

4 Q. Did -- when you say that it meant
5 that, in your words, that Mr. Musk would arrange to
6 make this happen, did you interpret "funding secured"
7 to mean that he had a signed agreement with a group
8 of someones or someone?

9 A. I had no idea of the structure of his
10 funding secured. It was just funding secured. The
11 nature of the structure, I had no idea.

12 Q. Regardless of the nature of the
13 structure, did you read that to mean that he had a
14 signed, binding agreement to get funding for going
15 private at \$420 per share?

16 A. You know, I didn't -- I just knew he
17 had funding secured and you're asking me questions
18 about this possibility and that possibility, and I
19 understand that's your job. I had no idea -- and at
20 the time I had no idea how it would happen, it was
21 just going to be done.

22 Q. Now, as of August 7th, had you been
23 aware or did you have any awareness of Mr. Musk's
24 ability to arrange for funding of his various
25 ventures?

1 A. No, I do not. That was a bad use of
2 terms. I apologize.

3 Q. Well, I'm -- my question is a little
4 bit different. I mean you've told us that until
5 August 24th, you were of the opinion that the go-to
6 private at 420 transaction was a done deal. I'm
7 starting with the premise that you've told us
8 multiple times, okay?

9 A. Yeah, uh-huh.

10 Q. So my question is: Would you have
11 thought that -- that the go-to private at 420 was a
12 done deal, would you have continued to think that as
13 of August 24th, if you thought the funding was not
14 secure?

15 MR. PORRITT: I'm going to object to
16 form. That's a hypothetical question.

17 A. I can't answer a hypothetical. I
18 don't -- I can't answer that question. I mean, I'm
19 sorry. I don't know.

20 Q. Okay. Let me ask it simply, not a
21 hypothetical.

22 As of August 24, 2018, did you still
23 believe that funding was secure?

24 MR. PORRITT: Object to form.

25 Q. Before the blog post?

1 A. Until Elon renounce D it and said
2 that it wasn't going to happen, I assumed it was
3 going to happen based on his Tweet.

4 Q. But -- and when you say you assumed
5 it was going to happen, does that also mean that you
6 assumed funding was secure?

7 A. Yeah. I assumed funding was secure
8 because that's what he said.

9 Q. So let me ask you -- and by the way,
10 just so you know, I have this practice after lunch
11 because I drink a lot of diet coke and that's a
12 diuretic, we may be taking a break really soon if
13 that's okay with you.

14 So let me show you an August 13th
15 Tweet. Let me give you a tab number on that.
16 Several things going on here. I'm going to talk to
17 my computer. Can someone please exhibit tell me that
18 tab number, the August 13th -- the blog post, I'm
19 sorry. Actually, it's Exhibit 16, Tab No. 24. Here
20 we go.

21 MR. PORRITT: Hey, Bill, there was
22 actually a better version of that same exhibit. We
23 sort of replaced this exhibit because this is the one
24 that -- this was based on -- I won't get into -- we
25 actually had a cut-off version that we initially used

1 Q. So if you could read that to yourself
2 and let me know when you're finished reading it?

3 A. I'm not seeing anything below this is
4 why I referred --

5 Q. Do you see are with it says why did I
6 say funding secured, going back almost two years?

7 A. Yes.

8 Q. Just read those next three
9 paragraphs, from there until the end of the
10 paragraph: I left the July 31th meeting, maybe we
11 can highlight that so we see what you're focused on.

12 A. Okay, I've read them.

13 Q. Well, you're -- just now you read
14 them?

15 A. Hello?

16 Q. Yeah, you read those just now?

17 A. They've been up there for a while on
18 my screen, so I read them, yes.

19 Q. Okay. So this is August 13th, some
20 11 days before Mr. Musk said he was not going to take
21 Tesla private.

22 So was the information in those
23 paragraphs consistent with your understanding of what
24 "funding secured" meant when you read the August 7th
25 Tweets?

1 A. It's consistent with my belief that
2 he had the capital coming from somewhere. Since the
3 Saudis had bought 5% and that was out before this,
4 that made me think that they were a part of it in a
5 big way, but I didn't -- I made no assumptions about
6 who.

7 Q. Given the definition that you had
8 about funding secured, given that definition, once
9 you read these paragraphs, did you still feel that
10 funding was secured for going private at 420 per
11 share?

12 A. I believe they confirmed one version
13 of it, yes.

14 Q. And when you say these paragraphs
15 confirm the one version of your belief that funding
16 was secured at 420, what do you mean by that?

17 A. I mean this was possibly one way he
18 would get the capital.

19 Q. Now, when you read this August 13th
20 Tweet about why Mr. Musk said funding was secured,
21 you notice that he doesn't say there was some written
22 signed agreement to fund Tesla going private at 420,
23 right; that's not in there?

24 A. No, correct.

25 Q. Despite that not being in here, you

1 thought that the facts that you read here, in the
2 Tweet, led you to believe that funding was secured
3 for going forward at 420?

4 MR. PORRITT: Object to form.

5 BY MR. PRICE:

6 Q. Is that correct?

7 A. You know, I was aware in a very big
8 way that there are laws limiting foreign investments
9 to some companies. So I never thought that the
10 Saudis would be it, but I thought they'd play a large
11 role. I never really spent a lot of time trying to
12 figure out who was putting up the money. I just
13 based my actions on his Tweet saying funding was
14 secured and I wasn't able to read his mind. I just
15 had to take him at his word.

16 Q. Well, because here on August 13th,
17 he's telling you why he said funding was secured,
18 what he meant by that, right?

19 A. Again, I interpret this as one
20 version, one possible version.

21 Q. And if you look at this, as you say,
22 one possible version of what he meant by funding
23 secured, you know, you, given your experience with
24 Tesla and Mr. Musk, would conclude that this
25 supported a belief that funding was secure, right?

1 A. It was a -- you know, it checked one
2 of the boxes, yes.

3 Q. Did anything in this August 13 blog
4 post where Mr. Musk explained what he meant by
5 "funding secured," did anything lead you to believe
6 that funding, in fact, was not secured?

7 A. No, no.

8 Q. Did you believe that funding could be
9 secured without there being, you know, a written,
10 signed, sealed, you know, and delivered writing
11 saying that?

12 MR. PORRITT: Object to form; asked
13 and answered.

14 A. You know, I'll be the first to admit,
15 I'm not a financial expert or wizard. I didn't know
16 how it was going to be structured. I just based my
17 actions and self-defense on 420 price, funding
18 secured, the statement, profound statement.

19 BY MR. PRICE:

20 Q. If we look at the paragraph after
21 these three paragraphs, beginning with "following the
22 August 7th announcement," you see that Mr. Musk is
23 talking about having continued -- continued
24 communications with the managing director of the
25 Saudi fund.

Do you see that?

A. Yes, uh-huh, I do.

Q. And it said that he's expressed support proceeding subject to financial and other due diligence and their internal review process for obtaining approvals. He's also asked for additional details on how the company would be taken private, including any required percentages and any regulatory requirements.

Do you see that?

A. Yes, I do.

Q. Now, is the information contained here where Mr. Musk is saying that the Saudi fund has said that proceeding a subject to due diligence and financials, internal review process and getting additional details on how the company would be taken private, did that information have any impact on your belief that funding was secure?

A. Impact -- these are details to a process, a process spelled out by going private at 420, funding secured. So they're subservient to that statement. These are just details of a process that for me may be valid, may not be valid, but not nearly as important as funding secured.

Q. In your mind, would it have been fair

1 for Mr. Musk to say that funding was secured if the
2 managing director of the Saudi fund had said that,
3 you know, funding is subject to financial and other
4 due diligence and review processes and additional
5 details on how the company would be taken private?

6 MR. PORRITT: I'm going to object to
7 form. That's an improper hypothetical.

8 A. I'm so sorry. Again, would you
9 repeat the question?

10 Q. Sure. Let me change it.

11 The way that you are, in your mind,
12 finding funding secured, would that be a fair term to
13 apply to a situation where the proposed funder or
14 investor has said that their investment was subject
15 to financial and other due diligence and an internal
16 review process and subject to additional details on
17 how the company would be taken private?

18 MR. PORRITT: I'm going to object to
19 form.

20 A. I don't know. I'm sorry to ask --
21 answer that way, but I really don't know.

22 Q. So funding secured might be a fair
23 term to apply that situation, it might not be? You
24 just don't know?

25 MR. PORRITT: I'm going to object to

1 form. That's not the testimony.

2 A. No, that's not what I was saying. I
3 don't know about -- I don't know how the process
4 would play out. I don't know what behind the scenes
5 was going on or might go on. I don't know how that
6 works. I don't know what was going on. All I know
7 is that funding was secured at 420 according to
8 Elon's Tweet.

9 Q. And having read this August 13th blog
10 post, the information that you saw here, including
11 that paragraph we're focusing on, is consistent with
12 your belief that funding was secure; is that right?

13 MR. PORRITT: I'm going to object to
14 form.

15 A. Again, it's behind the scenes,
16 technically detailed. I can't comment on something
17 that changes by the hour and I just know what I know
18 and that was this funding is secured at 420.

19 Q. Nothing in these paragraphs that
20 we've reviewed has changed your view that funding was
21 secured for a go-to private transaction at 420,
22 right?

23 A. No, nothing changes that --

24 Q. I'm sorry, is -- I missed that --
25 okay, nothing changes, good. I asked you one of

1 are involved in this case?

2 A. You know, I really did, even though I
3 didn't think about it. I didn't entertain the idea
4 that I would be but I did. I actually believe it. I
5 and who are short telling. I was never short a
6 stock. I was always a promotor. We bought eight
7 teslas and I thought, you know, this isn't right. As
8 much as I believe in Elon, he shouldn't get away with
9 hurting small people that are just thrown under the
10 tracks -- under the bus, so yeah, I did, I thought I
11 would be a good candidate.

12 Q. So you thought that you had
13 possessed, you know, what was necessary to be thought
14 of as a reasonable investor in connection with your
15 investment decisions in the Tesla securities, right?

16 A. Based on my limited knowledge of how
17 the process works, I thought yes.

18 Q. So I think we've previously
19 identified as Exhibit 437 -- hold on one sec -- I'm
20 sorry. We marked it as Exhibit 431. I apologize,
21 Exhibit 431, your Interrogatory answers. And if we
22 could look at page 227. Do you see there's an
23 Interrogatory question: IDENTIFY all PERSONS with
24 whom you communicated concerning a potential lawsuit
25 against DEFENDANTS at any time, including any and all

EXHIBIT B

Update on Taking Tesla Private

Elon Musk

August 13, 2018

As I announced last Tuesday, I'm considering taking Tesla private because I believe it could be good for our shareholders, enable Tesla to operate at its best, and advance our mission of accelerating the transition to sustainable energy. As I continue to consider this, I want to answer some of the questions that have been asked since last Tuesday.

What has happened so far?

On August 2nd, I notified the Tesla board that, in my personal capacity, I wanted to take Tesla private at \$420 per share. This was a 20% premium over the ~\$350 then current share price (which already reflected a ~16% increase in the price since just prior to announcing Q2 earnings on August 1st). My proposal was based on using a structure where any existing shareholder who wished to remain as a shareholder in a private Tesla could do so, with the \$420 per share buyout used only for shareholders that preferred that option.

After an initial meeting of the board's outside directors to discuss my proposal (I did not participate, nor did Kimbal), a full board meeting was held. During that meeting, I told the board about the funding discussions that had taken place (more on that below) and I explained why this could be in Tesla's long-term interest.

At the end of that meeting, it was agreed that as a next step, I would reach out to some of Tesla's largest shareholders. Our largest investors have been extremely supportive of Tesla over the years, and understanding whether they had the ability and desire to remain as shareholders in a private Tesla is of critical importance to me. They are the ones who believed in Tesla when no one else did and they are the ones who most believe in our future. I told the board that I would report back after I had these discussions.

Why did I make a public announcement?

The only way I could have meaningful discussions with our largest shareholders was to be completely forthcoming with them about my desire to take the company private. However, it wouldn't be right to share information about going private with just our largest investors without sharing the same information with all investors at the same time. As a result, it was clear to me that the right thing to do was announce my intentions publicly. To be clear, when I made the public announcement, just as with this blog post and all other discussions I have had on this topic, I am speaking for myself as a potential bidder for Tesla.

Why did I say "funding secured"?

Going back almost two years, the Saudi Arabian sovereign wealth fund has approached me multiple times about taking Tesla private. They first met with me at the beginning of 2017 to express this interest because of the important need to diversify away from oil. They then held several additional meetings with me over the next year to reiterate this interest and to try to move forward with a going private transaction. Obviously, the Saudi sovereign fund has more than enough capital needed to execute on such a transaction.

Recently, after the Saudi fund bought almost 5% of Tesla stock through the public markets, they reached out to ask for another meeting. That meeting took place on July 31st. During the meeting, the Managing Director of the fund expressed regret that I had not moved forward previously on a going private transaction with them, and he strongly expressed his support for funding a going private transaction for Tesla at this time. I understood from him that no other decision makers were needed and that they were eager to proceed.

I left the July 31st meeting with no question that a deal with the Saudi sovereign fund could be closed, and that it was just a matter of getting the process moving. This is why I referred

to “funding secured” in the August 7th announcement.

Following the August 7th announcement, I have continued to communicate with the Managing Director of the Saudi fund. He has expressed support for proceeding subject to financial and other due diligence and their internal review process for obtaining approvals. He has also asked for additional details on how the company would be taken private, including any required percentages and any regulatory requirements.

Another critical point to emphasize is that before anyone is asked to decide on going private, full details of the plan will be provided, including the proposed nature and source of the funding to be used. However, it would be premature to do so now. I continue to have discussions with the Saudi fund, and I also am having discussions with a number of other investors, which is something that I always planned to do since I would like for Tesla to continue to have a broad investor base. It is appropriate to complete those discussions before presenting a detailed proposal to an independent board committee.

It is also worth clarifying that most of the capital required for going private would be funded by equity rather than debt, meaning that this would not be like a standard leveraged buyout structure commonly used when companies are taken private. I do not think it would be wise to burden Tesla with significantly increased debt.

Therefore, reports that more than \$70B would be needed to take Tesla private dramatically overstate the actual capital raise needed. The \$420 buyout price would only be used for Tesla shareholders who do not remain with our company if it is private. My best estimate right now is that approximately two-thirds of shares owned by all current investors would roll over into a private Tesla.

What are the next steps?

As mentioned earlier, I made the announcement last Tuesday because I felt it was the right and fair thing to do so that all investors had the same information at the same time. I will now continue to talk with investors, and I have engaged advisors to investigate a range of potential structures and options. Among other things, this will allow me to obtain a more precise understanding of how many of Tesla’s existing public shareholders would remain shareholders if we became private.

If and when a final proposal is presented, an appropriate evaluation process will be undertaken by a special committee of Tesla’s board, which I understand is already in the process of being set up, together with the legal counsel it has selected. If the board process results in an approved plan, any required regulatory approvals will need to be obtained and the plan will be presented to Tesla shareholders for a vote.

SHARE